

with respect to that partnership (determined with regard to extensions of that period under section 6229(b)).

(3) *Years covered by election.* The election shall be effective for the partnership taxable year to which the return relates and all subsequent partnership taxable years unless revoked with the consent of the Commissioner.

[T.D. 8128, 52 FR 6789, Mar. 5, 1987; 52 FR 9296, Mar. 24, 1987, as amended by T.D. 8808, 64 FR 3839, Jan. 26, 1999]

§ 301.6231(a)(2)-1T Persons whose tax liability is determined indirectly by partnership items (temporary).

(a) *Spouse filing joint return with individual holding separate interest—(1) In general.* Except as otherwise provided in this paragraph (a), a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as a partner for purposes of subchapter C of chapter 63 of the Code. Thus, the spouse who files a joint return with a partner will be permitted to participate in administrative and judicial proceedings.

(2) *Counting rules.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall not be counted as a partner for purposes of applying section 6223(b) (relating to special rules for partnerships with more than 100 partners) and section 6231(a)(1)(B) (relating to the exception for small partnerships).

(3) *Notice rules—(i) In general.* Except as provided in paragraph (a)(3)(ii) of this section, for purposes of subchapter C of chapter 63 of the Code, a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as receiving any notice received by the individual holding the separate interest.

(ii) *Spouse identified on partnership return or by statement.* Paragraph (a)(3)(i) of this section shall not apply to a spouse who files a joint return with an individual holding a separate interest in the partnership if that spouse:

(A) Is identified on the partnership return; or

(B) Is identified as a partner entitled to notice as provided in § 301.6223(c)-1(b).

(4) *Cross-reference.* See § 301.6231(a)(12)-1T for special rules re-

lating to spouses holding a joint interest in a partnership.

(b) *Shareholder of C corporation.* A shareholder of a C corporation (as defined in section 1361(a)(2)) is not a partner in a partnership merely because the C corporation is a partner in that partnership.

[T.D. 8128, 52 FR 6790, Mar. 5, 1987]

§ 301.6231(a)(3)-1 Partnership items.

(a) *In general.* For purposes of subtitle F of the Internal Revenue Code of 1954, the following items which are required to be taken into account for the taxable year of a partnership under subtitle A of the Code are more appropriately determined at the partnership level than at the partner level and, therefore, are partnership items:

(1) The partnership aggregate and each partner's share of each of the following:

(i) Items of income, gain loss, deduction, or credit of the partnership;

(ii) Expenditures by the partnership not deductible in computing its taxable income (for example, charitable contributions);

(iii) Items of the partnership which may be tax preference items under section 57(a) for any partner;

(iv) Income of the partnership exempt from tax;

(v) Partnership liabilities (including determinations with respect to the amount of the liabilities, whether the liabilities are nonrecourse, and changes from the preceding taxable year); and

(vi) Other amounts determinable at the partnership level with respect to partnership assets, investments, transactions and operations necessary to enable the partnership or the partners to determine—

(A) The investment credit determined under section 46(a);

(B) Recapture under section 47 of the investment credit;

(C) Amounts at risk in any activity to which section 465 applies;

(D) The depletion allowance under section 613A with respect to oil and gas wells; and

(E) The application of section 751 (a) and (b);

(2) Guaranteed payments;

(3) Optional adjustments to the basis of partnership property pursuant to an election under section 754 (including necessary preliminary determinations, such as the determination of a transferee partner's basis in a partnership interest); and

(4) Items relating to the following transactions, to the extent that a determination of such items can be made from determinations that the partnership is required to make with respect to an amount, the character of an amount, or the percentage interest of a partner in the partnership, for purposes of the partnership books and records or for purposes of furnishing information to a partner:

- (i) Contributions to the partnership;
- (ii) Distributions from the partnership; and
- (iii) Transactions to which section 707(a) applies (including the application of section 707(b)).

(b) *Factors that affect the determination of partnership items.* The term "partnership item" includes the accounting practices and the legal and factual determinations that underlie the determination of the amount, timing, and characterization of items of income, credit, gain, loss, deduction, etc. Examples of these determinations are: The partnership's method of accounting, taxable year, and inventory method; whether an election was made by the partnership; whether partnership property is a capital asset, section 1231 property, or inventory; whether an item is currently deductible or must be capitalized; whether partnership activities have been engaged in with the intent to make a profit for purposes of section 183; and whether the partnership qualifies for the research and development credit under section 30.

(c) *Illustrations—(1) In general.* This paragraph (c) illustrates the provisions of paragraph (a)(4) of this section. The determinations illustrated in this paragraph (c) that the partnership is required to make are not exhaustive; there may be additional determinations that the partnership is required to make which relate to a transaction listed in paragraph (a)(4) of this section. The critical element is that the partnership needs to make a determination with respect to a matter for

the purposes stated; failure by the partnership actually to make a determination (for example, because it does not maintain proper books and records) does not prevent an item from being a partnership item.

(2) *Contributions.* For purposes of its books and records, or for purposes of furnishing information to a partner, the partnership needs to determine:

- (i) The character of the amount received from a partner (for example, whether it is a contribution, a loan, or a repayment of a loan);
- (ii) The amount of money contributed by a partner;
- (iii) The applicability of the investment company rules of section 721(b) with respect to a contribution; and
- (iv) The basis to the partnership of contributed property (including necessary preliminary determinations, such as the partner's basis in the contributed property).

To the extent that a determination of an item relating to a contribution can be made from these and similar determinations that the partnership is required to make, therefore, that item is a partnership item. To the extent that that determination requires other information, however, that item is not a partnership item. For example, it may be necessary to determine whether contribution of the property causes recapture by the contributing partner of the investment credit under section 47 in certain circumstances in which that determination is irrelevant to the partnership.

(3) *Distributions.* For purposes of its books and records, or for purposes of furnishing information to a partner, the partnership needs to determine:

- (i) The character of the amount transferred to a partner (for example, whether it is a distribution, a loan, or a repayment of a loan);
- (ii) The amount of money distributed to a partner;
- (iii) The adjusted basis to the partnership of distributed property; and
- (iv) The character of partnership property (for example, whether an item is inventory or a capital asset).

To the extent that a determination of an item relating to a distribution can

be made from these and similar determinations that the partnership is required to make, therefore, that item is a partnership item. To the extent that that determination requires other information, however, that item is not a partnership item. Such other information would include those factors used in determining the partner's basis for the partnership interest that are not themselves partnership items, such as the amount that the partner paid to acquire the partnership interest from a transferor partner if that transfer was not covered by an election under section 754.

(4) *Transactions to which section 707 (a) applies.* For purposes of its books and records, the partnership needs to determine:

(i) The amount transferred from the partnership to a partner or from a partner to the partnership in any transaction to which section 707(a) applies;

(ii) The character of such an amount (for example, whether or not it is a loan; in the case of amounts paid over time for the purchase of an asset, what portion is interest); and

(iii) The percentage of the capital interests and profits interests in the partnership owned by each partner.

To the extent that a determination of an item relating to a transaction to which section 707(a) applies can be made from these and similar determinations that the partnership is required to make, therefore, that item is a partnership item. To the extent that that determination requires other information, however, that item is not a partnership item. An example of such other information is the cost to the partner of goods sold to the partnership.

(d) *Effective date.* This section shall apply with respect to partnership taxable years beginning after September 3, 1982. This section shall also apply with respect to any partnership taxable year ending after September 3, 1982, if with respect to that year there is an agreement entered into pursuant to section 407(a)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

[T.D. 8082, 51 FR 13214, Apr. 18, 1986; 51 FR 19062, May 27, 1986]

§ 301.6231(a)(5)–1T Definition of affected item (temporary).

(a) *In general.* The term “affected item” includes items unrelated to the items reflected on the partnership return (for example, an item, such as the threshold for the medical expense deduction under section 213, that varies if there is a change in an individual partner's adjusted gross income).

(b) *Partner's basis in his partnership interest.* A partner's basis in his interest in the partnership is an affected item to the extent it is not a partnership item.

(c) *At-risk limitation.* The application of the at-risk limitation under section 465 to a partner with respect to a loss flowing from a partnership is an affected item to the extent it is not a partnership item.

(d) *Addition to tax or additional amount—(1) In general.* The term “affected item” includes any addition to tax or additional amount provided by subchapter A of chapter 68 of the Internal Revenue Code of 1954 to the extent provided in this paragraph (d).

(2) *Addition to tax or additional amount without floor.* In the case where an addition to tax or additional amount that does not contain a floor (that is, a threshold amount of underpayment or understatement necessary before the imposition of the addition to tax or additional amount) is imposed on a partner as the result of an adjustment to a partnership item, the term “affected item” shall include the addition to tax or additional amount computed with reference to the entire underpayment or understatement.

(3) *Addition to tax or additional amount containing floor—(i) Floor exceeded prior to adjustment.* In the case where a partner would have been subject to an addition to tax or additional amount that contains a floor in the absence of an adjustment to a partnership item (that is, the partner's understatement or underpayment exceeded the floor even without an adjustment to a partnership item) the term “affected item” shall include only the addition to tax or additional amount computed with reference to the partnership item (or affected item).

(ii) *Floor not exceeded prior to adjustment.* In the case of an addition to tax